

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRD REGION**

ALFRED UNIVERSITY

Employer

and

Case 3-RM-779

**CIVIL SERVICE EMPLOYEES ASSOCIATION,
LOCAL 1000, AFSCME, AFL-CIO¹**

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to Section 9(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,² I find:

The hearing officer's rulings were free from prejudicial error and are hereby affirmed.

The parties stipulated that Alfred University (Alfred) is a New York State corporation with an office and facility in Alfred, New York, where it is engaged in the operation of a university. Annually, Alfred, in conducting its operations, derives gross revenues in excess of one million dollars, and purchases and receives at its Alfred, New York facility, goods and services valued in excess of \$50,000 directly from points outside of the State of New York. Based on the parties' stipulation and

¹ The name of the Petitioner appears as amended at the hearing.

² Post-hearing briefs were filed by the Petitioner and Union and have been duly considered.

the record as a whole, I find that Alfred is engaged in commerce under Section 2(2), (6) and (7) of the Act.

The parties stipulated, and I find, that Civil Service Employees Association, Local 1000, AFSCME, AFL-CIO (“Union”) is a labor organization under Section 2(5) of the Act.

A question affecting commerce exists concerning the representation of certain Alfred employees within the meaning of Sections 2(6) and (7), and 9(c)(1) of the Act.

On May 9, 2003,³ the Union asked Alfred to recognize it as the collective-bargaining representative of its non-professional employees at its New York State College of Ceramics, herein called the College of Ceramics. Alfred denied this request and filed the instant petition on May 27. The parties stipulated to the appropriateness of the following unit:

All full-time and regular part-time carpenters, machinists, janitors, administrative aides, library clerks, secretary – UG schedule, CEMS/OSP/CACT accounts secretary, secretary – Scholes Library, administrative assistants, secretary to dean CEMS, mechanics/locksmiths, assistant to museum director, mail and supply clerks, payroll officers, cataloging specialists, human resources assistants, visual resources assistant, principal stores clerks, processing and thermal analysis lab technicians, library clerks, secretary - WRC, electricians, electro mechanics lab technician/safety coordinators, secretary – CGR, accounting clerks, web production & design assistants, serials assistants, technical services assistants, main assistants/carpenters, laboratory technicians, laboratory mechanics, plumbers, web production specialists, CACT/NYSTAR accounts secretary, research account specialists, purchasing agents, secretary – continuing education, secretary – CACT, secretary – graduate sched./admin. advising, electronic ceramics technicians, accounts payable clerks, glass studio technicians and 2-D technicians; excluding all confidential personnel, security personnel, guards, professional employees and supervisors as defined in the Act.

Based on the parties stipulation, and the record as a whole, I find that this unit is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

³ All dates hereinafter are 2003, unless otherwise noted.

This case presents two issues. The first issue is jurisdictional and concerns whether the College of Ceramics is exempt from the Board's jurisdiction as a "State or political subdivision" under Section 2(2) of the Act. The Employer asserts that the Board should assert jurisdiction herein and the Union maintains that the Employer is exempt from the Board's jurisdiction. The second issue concerns whether the maintenance supervisor, custodial and grounds supervisor, and custodian/foreman are Section 2(11) supervisors. The Union asserts that they are supervisors and should be included in the unit and the Employer, to the contrary, asserts that they are supervisors as defined in Section 2(11) of the Act.

JURISDICTION

Based on the parties' stipulations and the record as a whole, I find that it is appropriate for the Board to assert jurisdiction over the Employer herein.

Alfred is a private university that consists of four colleges: (1) College of Ceramics; (2) College of Liberal Arts; (3) College of Business; and (4) College of Engineering and Professional Studies. It employs approximately 500 employees and educates 2500 students each year.

The College of Ceramics has two schools: (1) ceramic engineering and materials science; and (2) art and design. It employs approximately 150 employees and educates 750 students.

The College of Ceramics is one of New York's five statutory colleges.⁴ As a statutory college, it receives approximately half of its funding from New York State.⁵ Statutory colleges are distinguishable from the several institutions that comprise the State University of New York ("SUNY")

⁴ N.Y. Educ. Law Section 6101 *et seq.* The other statutory colleges are: (1) New York State College of Veterinary Medicine; (2) New York State College of Agriculture and Life Sciences; (3) New York State College of Human Ecology; and (4) New York State School of Industrial and Labor Relations. N.Y. Educ. Law Sections 5711, 5712, 5714, 5715. These statutory colleges are located at Cornell University.

⁵ The remainder of its funds comes from tuition receipts and research contributions.

because SUNY institutions, unlike statutory colleges, are directly controlled by New York State and report directly to the SUNY Board of Trustees (“SUNY trustees”).⁶

Alfred, including the College of Ceramics, is governed by a board of trustees and various administrative officials. SUNY officials do not hold any of, or appoint individuals to, these governing positions. Alfred’s board of trustees establishes tuition,⁷ wages, benefits,⁸ the budget and hires the workforce at the College of Ceramics.⁹ Whenever the College of Ceramics runs a deficit, Alfred, as opposed to SUNY, finances this deficit.¹⁰ Alfred’s management recruits, interviews and hires the College of Ceramics’ workforce, without SUNY oversight.¹¹ Alfred enjoys unfettered discretion to create the College of Ceramics’ academic curriculum and educational policies,¹² employment policies,¹³ faculty handbook, student honor code and regulations. Alfred has independently adopted sexual harassment, smoking, drug-free workplace, attendance, punctuality, inclement weather, appraisal and leave policies, which are universally

⁶ See generally N.Y. Educ. Law Section 355.

⁷ While Alfred makes the final decision, the tuition rate is set in consultation with SUNY finance committee. However, the SUNY finance committee is not empowered to reject proposed tuition increases.

⁸ When Alfred increases wages for College of Ceramics employees, the intended wage increase is presented to, and approved by, the SUNY Board of Trustees, in what is described as a “rubber stamping” process. There is no evidence that the SUNY Board of Trustees has ever rejected a proposed wage increase, debated or even questioned a proposed wage increase, or what effect, if any, a rejection by the SUNY Trustees would have.

⁹ SUNY Board of Trustees maintains general approval authority over the requests for appropriations, budgets, expenditures and estimates for the College of Ceramics. N.Y. Educ. Law Section 6103.

¹⁰ SUNY has under-funded the College of Ceramics for the last decade and Alfred has consistently paid the costs beyond those funded by SUNY.

¹¹ The sole exception to this rule arises when Alfred hires a College of Ceramics dean because such appointments are submitted to the SUNY Trustees for approval, in what the record testimony describes as merely a “rubber stamping” process. N.Y. Educ. Law Section 355. There is no evidence that the SUNY Trustees have ever rejected or even debated an appointment, or what impact, if any, an attempted rejection would have on the ultimate decision.

¹² N.Y. Educ. Law Section 6102.

¹³ SUNY employees and College of Ceramics employees enjoy different terms and conditions of employment. Unlike SUNY, College of Ceramics employees are not classified as employees governed by New York State Civil Service Law. N.Y. Educ. Law Section 355-a[1][a]. College of Ceramics and SUNY employees receive different wages, vacation allowances and leave allowance. They are also subject to different workers compensation and layoff rules.

applied to all of its employees. Alfred has independently chosen to offer all of its employees identical disability, accident and life insurance, tuition, holiday, sick time and vacation benefits. However, unlike Alfred's other employees, College of Ceramics employees receive New York State paychecks¹⁴ and are eligible to receive New York State retirement and health benefits.¹⁵ Alfred has independently decided to allow College of Ceramics students to take all of its course offerings, fully utilize its facilities and receive the same diploma as its other students.

The College of Ceramics is a component of Alfred and is not a separate corporate entity. Although different deans presently manage Alfred's four constituent colleges, Alfred has unilaterally decided to assign this task to a single dean in the near future.

The College of Ceramics is required by New York State law to subject its purchases to a competitive bidding process. New York State owns the College of Ceramics' real and personal property.¹⁶

The College of Ceramics is an employer within the jurisdiction of the Act. Section 2(2) of the Act provides that an "employer" under the statute does not include "... any State or political subdivision." An employer is an exempt political subdivision if it is either: "(1) created directly by the state to constitute a department or administrative arm of the government; or (2) administered by individuals who are responsible to public officials or to the general electorate." *University of Vermont*, 297 NLRB 291 (1989), citing, *NLRB v. Natural Gas Utility District of Hawkins County*, 402 U.S. 600, 605 (1971). The determination of whether an employer "exists as an essentially private venture,

¹⁴ This is due to change shortly. College of Ceramics employees will soon begin receiving paychecks from Alfred as a result of its implementation of a new payroll system.

¹⁵ Alfred is not mandated by SUNY or any other state entity or statute to make these benefits available to its College of Ceramics employees.

¹⁶ N.Y. Educ. Law Section 6102.

with insufficient identity with or relationship" to a state must be made in light of the "actual operations and characteristics" of the employer's business. *Hawkins*, supra, 402 U.S. at 605.

1. The College of Ceramics is not an administrative arm of government.

The College of Ceramics does not satisfy the first prong of the *Hawkins* test. Although New York State created the College of Ceramics, it was clearly not created to constitute a department or administrative arm of the state. In determining whether an entity is exempt from the Board's jurisdiction, the Board evaluates: statutory intent; rulings of state courts and agencies; state budgetary and operational control; state audit authority; state funding; state spending control; state borrowing control; state authority to appoint administrators; tax exempt status; and state benefit eligibility. *Hinds County Human Resources Agency*, 331 NLRB 1404, 1404-1405 (2000).

The relevant statutes fail to establish that New York State intended the College of Ceramics to serve as a political arm of the state. New York's Education Law relegates several key aspects of the College of Ceramics' administration to Alfred's sole discretion. Specifically, Alfred can freely create academic curriculum, hire faculty, adjust wages and benefits, maintain discipline and create educational policy at the College of Ceramics. N.Y. Educ. Law Section 6101 – 6103. Such discretion is not given to SUNY institutions. N.Y. Educ. Law Section 355. The College of Ceramics' employees are exempt from New York State Civil Service Law. N.Y. Educ. Law Section 355-a[1][a]. Additionally, state legislation that regulates misconduct by public officials is not applicable to the College of Ceramics. N.Y. Public Officers Law, Section 73[1][g] (business activities); N.Y. General Municipal Law, Section 810[4](conflicts of interest). These statutes collectively demonstrate that the College of Ceramics was not intended to be a political subdivision of the State. *Hinds County*, supra.

State court and agency decisions also support such a finding. *New York Institute for Education of the Blind*, 254 NLRB 664, 667 (1981). Rulings by the New York Attorney General

and other state entities indicate that the State of New York does not consider statutory colleges, such as the College of Ceramics, to be a political subdivision or arm of the State.¹⁷ The District Court for the Northern District of New York has held that the statutory colleges at Cornell University are not state actors for constitutional purposes.¹⁸

Alfred's substantial control over the College of Ceramics' budget and operations further demonstrates that it is not a state entity. Alfred has unfettered discretion to fashion curriculum, hire faculty, maintain discipline, and formulate educational policy at the College of Ceramics. N.Y. Educ. Law Sections 6101 – 6103. While the SUNY Board of Trustees maintains general supervision over the hiring of deans and requests for appropriations, budgets, expenditures and estimates for the College of Ceramics (N.Y. Educ. Law Sections 355, 6103), there is no evidence that the SUNY trustees engage in anything more than a “rubber stamping” process. Thus, Alfred's significant budgetary and operational control concerning the College of Ceramics further demonstrates that it is not a state or “political subdivision.” *Hinds County*, supra. Moreover, Alfred establishes, with little oversight by the SUNY Board of Trustees, the wages and other terms and conditions of employment of College of Ceramics employees.¹⁹

There is no evidence that SUNY or New York State have ever audited the College of Ceramics' financial records. Although the College of Ceramics receives approximately half of its funding from SUNY, there is no evidence that SUNY significantly restricts its expenditure of such

¹⁷ *Hamburger v. Cornell Univ.*, 226 N.Y. 625 (1919); *Effron v. State of New York*, 144 N.Y.S.2d 565 (Ct. Claims 1953) appeal dismissed 136 N.Y.S.2d 385 (App. Div. 3d. Dept. 1954); *Green v. State of New York*, 176 N.Y.S. 681 (1919); *Green v. Cornell Univ.*, 233 N.Y. 519 (1922); *Stoll v. New York State College of Veterinary Medicine at Cornell Univ.*, 701 N.Y.S.2d 316 (1999); *Neish v. Cornell Univ.*, 460 N.Y.S.2d 861 (1983); 1899 Op. Atty. Gen. 230; 1928 Op. Atty. Gen. 215. By letter dated August 28, 1992, SUNY counsel advised Alfred University that the College of Ceramics is not a department or subdivision of the state. Pet. Exh. 5.

¹⁸ *Curto v. Cornell Univ.*, 248 F.Supp.2d 132, 139-40 (N.D.N.Y. 2003).

¹⁹ See N.Y. Educ. Law Section 355-a, 3.a.

funds.²⁰ When the College of Ceramics runs a deficit, which it has consistently done over the last decade, Alfred, as opposed to SUNY, makes up the shortfall. I find that Alfred's substantial control over the expenditure of New York State funds at the College of Ceramics further demonstrates that the College of Ceramics is not a "state or political subdivision." *Research Foundation of the City University of New York*, 337 NLRB No. 152 (2002)(finding jurisdiction where employer received all of its funding from a municipal college on several bases, including the employer's significant discretion concerning how to spend those funds).

There is no evidence that SUNY is empowered to restrict Alfred's borrowing concerning the College of Ceramics. This significant fiscal independence further demonstrates that the College of Ceramics is not a department of the state. *Hinds County*, supra.

SUNY does not appoint Alfred's administrator or board of trustees, the individuals who essentially govern the College of Ceramics.²¹ This further demonstrates that the College of Ceramics is not a "state or political subdivision." *Hinds County*, supra.

The record fails to reveal whether the College of Ceramics has been granted federal and state tax exemptions.

Finally, although College of Ceramics employees are eligible for New York State retirement and health benefits, I find that this isolated factor is insufficient to establish that the College of Ceramics is a "state or political subdivision," particularly in light of the numerous

²⁰ As stated, the record demonstrates that the SUNY Board of Trustees consistently "rubberstamp" the College of Ceramics' budget proposals.

²¹ SUNY solely has the limited authority to approve Alfred's appointment of the College of Ceramics' dean. As the record testimony demonstrates, this is also a pro forma matter. SUNY has never rejected any such appointment.

court and agency holdings that statutory college employees are not New York State employees. See, e.g., *Hamburger v. Cornell Univ.*, supra; *Green v. Cornell Univ.*, supra; *Stoll v. New York State College of Veterinary Medicine at Cornell Univ.*, supra; *Neish v. Cornell Univ.*, supra; *Curto v. Cornell Univ.*, supra; 1899 Op. Atty. Gen. 230; 1928 Op. Atty. Gen. 215.

Based on the foregoing, I find that the College of Ceramics was not created by New York State to serve as a political subdivision.

2. The College of Ceramics is not administered by individuals who are responsible to public officials or the general electorate.

The College of Ceramics also does not satisfy the second prong of the *Hawkins* exemption. It is not administered by individuals who are responsible to public officials or the general electorate. To determine whether an entity is "administered by" individuals responsible to public officials or to the general electorate, the Board considers whether those individuals are appointed by, and subject to removal by, public officials. *Hawkins County*, supra, 402 U.S. at 605; *Research Foundation*, supra. Where a majority of an employer's board is composed of individuals responsible to public officials or the general electorate, it may be an exempt political subdivision. *Research Foundation*, supra.

Given that Alfred's trustees, the body that governs its College of Ceramics, are not State or SUNY appointed, the second part of the *Hawkins* test has not been satisfied.²² *Research Foundation*, supra.

²² Although Alfred's trustees are arguably *indirectly* responsible to public officials because the SUNY trustees, who are public officials, "rubber stamp" certain fiscal and other decisions that they make concerning the College of Ceramics, I find that this *indirect* responsibility is too narrow to meet the *Hawkins* test. The *Hawkins* test requires *direct* and *substantial* responsibility to public officials. Such direct responsibility emanates from one's appointment, and potential removal, by public officials, as opposed to the "rubber stamping" of an isolated number of decisions in the instant case. *Hawkins*, supra.

In its post-hearing brief, the Union asserts that four cases show that the College of Ceramics is a “state or political subdivision” exempt from Board jurisdiction: (1) *New York Institute*, supra; (2) *Jervis Public Library Association, Inc.*, 262 NLRB 1386 (1982); (3) *University of Vermont*, 297 NLRB 291, 295 (1989) and (4) *Hinds County*, supra.

In *New York Institute*, the Board found that a school was an exempt employer; 254 NLRB at 667. The Board relied upon the following factors: the state’s significant financial control over the school’s finances and operations; audit authority; legislation; and court and administrative decisions. *Id.* *New York Institute* is distinguishable for three reasons. First, SUNY exercises vastly less fiscal control in the instant case. Second, there is no evidence that SUNY has audit authority in the instant case. Third, state courts and agencies have uniformly held that the College of Ceramics is not a state agent.

In *Jervis Public Library*, the Board found that a library that was an exempt employer. 262 NLRB at 1387-88. The Board relied upon the following factors: the state’s significant financial control over the employer’s finances and operations; and the library was almost entirely supported by government funds. *Id.* *Jervis Public Library* is distinguishable for two reasons. First, SUNY exercises vastly less fiscal control in the instant case. Second, the College of Ceramics is only partially state-funded and SUNY exercises limited control over how such funds are spent.

In *University of Vermont*, the Board found that a university was an exempt employer. 297 NLRB at 295. The Board relied upon the following factors: the majority of the university’s trustees were selected by the state; the legislation that created the university clearly identified it as a state instrumentality; the university’s finances and operations were heavily state regulated; and various state laws and court decisions described the university as a state agent. *Id.* *University of Vermont* is distinguishable for four reasons. SUNY does not appoint Alfred’s board of trustees or administrators.

The legislation that created the College of Ceramics does not unequivocally describe it as a state instrumentality. SUNY exercises vastly less fiscal control in the instant case. Lastly, state court decisions do not describe the College of Ceramics as a state agent.

In *Hinds County*, the Board found that a state-created institution was an exempt employer because:

[T]he Employer was created directly ... pursuant to a state statute specifically granting county boards the power to establish and operate human resources agencies; the state statute specifically indicated that such agencies are to be under local government control; the Employer receives virtually all of its funds from state and federal Governmental sources; and the amount and use of those funds is specified and controlled by governmental contracts and grants.

331 NLRB at 1405-1406. *Hinds County* is distinguishable. The enabling statute that created the College of Ceramics delegated its operation and control to Alfred, as opposed to another governmental entity. The College of Ceramics only receives a portion of its funding from governmental entities. Finally, SUNY exercises vastly less fiscal control over the College of Ceramics than the control exercised by local government over the institution in *Hinds County*.

3. Conclusion:

Based on the foregoing, I find that the College of Ceramics does not satisfy either prong of the *Hawkins* exemption. The College of Ceramics is a component of Alfred's operations, and is operated in the manner independent from governmental control. Thus, it is clear that the Board has jurisdiction herein. This determination is consistent with the Board's prior exercise of jurisdiction over the statutory

colleges at Cornell University. See, e.g., *Cornell University*, 183 NLRB 329 (1970); *Cornell University*, 245 NLRB 987 (1979).²³

In concluding that the Board has jurisdiction in this matter, I note that New York State's statutory scheme in establishing the College of Ceramics and assigning its administration to Alfred is akin to a state entity subcontracting a government function to private entity. In such cases, the Board has generally exercised jurisdiction over the private subcontractor, irrespective of the fact that the state entity may retain significant control over the private entity's operations. See, e.g., *Aramark Corp.*, 323 NLRB 256 (1997) (jurisdiction over a private employer operating food services for a county school board pursuant to contract); *Correctional Medical Services*, 325 NLRB 1061 (1998)(jurisdiction over a private employer who contracted with the State of Illinois to provide health care services at a state correctional facility); *Management Training Corp.*, 317 NLRB 1355 (1995)(jurisdiction over a private employer operating a job corp. center pursuant to a contract with the U.S. Department of Labor).

SUPERVISORY ISSUES

Based on the parties' stipulations and the record as a whole, I find that while the maintenance supervisor and custodial and grounds supervisor are Section 2(11) supervisors, the custodian/foreman is not and thus, he should be included in the unit found appropriate herein.

Kenneth Ordway is a maintenance supervisor. In this capacity, he assists director of physical plant Johnson with his supervisory duties²⁴ and performs HVAC maintenance work. Ordway substitutes for Johnson whenever he is unavailable. When he substitutes for Johnson,

²³ Although the Board did not directly analyze whether jurisdiction should be asserted over the statutory colleges at Cornell University, it nevertheless exercised such jurisdiction. *Id.* However, given that jurisdiction is a threshold

question in every case, the *Cornell* cases support my jurisdictional finding. See also *Temple University*, 194 NLRB 1160, 1161 n.5 (1972).

²⁴ Johnson supervises 23 physical plant employees.

Ordway approves employee time sheets, writes work orders, orders supplies, evaluates work and writes reports. In his normal role, Ordway monitors employee attendance, interviews applicants, makes effective hiring recommendations,²⁵ distributes work orders, approves overtime requests, approves short-term vacation requests and issues discipline.²⁶

Robert Matteson is a custodial and grounds supervisor, who directs 12 custodial employees. He interviews all custodial applicants, makes effective hiring recommendations,²⁷ evaluates custodial work, issues discipline,²⁸ approves weekly timesheets, assigns work, sets work schedules, orders supplies, approves leave requests, changes work schedules to accommodate employee needs and trains employees. He also performs non-supervisory groundskeeper work, which occupies approximately 40% of his time. He also occasionally substitutes for Johnson.

Robert Cornell is a custodian/foreman. He is not authorized to discipline employees. He performs custodial work and is considered a senior custodian, who periodically trains new employees. He occasionally substitutes for Matteson.²⁹

While the maintenance supervisor, and custodial and grounds supervisor, are Section 2(11) supervisors, the custodian/foreman is not. Section 2(3) of the Act excludes from the definition of a covered "employee" any "supervisor." Section 2(11) defines a "supervisor" as:

[A]ny individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

²⁵ Johnson affords Ordway's hiring recommendations significant deference.

²⁶ Ordway issues verbal and written counselings, and extends probationary periods.

²⁷ Alfred will not hire a custodial employee without his recommendation.

²⁸ He has issued verbal warnings and written warnings, and extends probationary periods.

²⁹ The record fails to establish whether this substitution is done on a regular basis or is merely sporadic.

Employees are supervisors if they hold the authority to engage in any 1 of the 12 listed supervisory functions; their "exercise of such authority is not of a merely routine ..., but requires the use of independent judgment;" and their authority is exercised "in the interest of the employer." *NLRB v. Kentucky River Community Care, Inc.*, 532 U.S. 706, 713 (2001). The burden of proving supervisory status rests with the party making that assertion. *Id.* at 712.

The maintenance supervisor, Ordway, is a Section 2(11) supervisor. He exercises independent judgment, in Alfred's interest, to hire, assign, discipline and responsibly to direct its employees. He also regularly substitutes for Johnson, an undisputed supervisor.

The custodial and grounds supervisor, Matteson, is a Section 2(11) supervisor. He exercises independent judgment, in Alfred's interest, to hire, assign, discipline and direct its employees.

Petitioner has failed to show that the custodian/foreman, Cornell, is a Section 2(11) supervisor. There is no evidence that he hires, transfers, lays off, recalls, promotes, discharges, assigns, rewards, responsibly directs workers or adjusts grievances, nor does he effectively recommend such actions.

Cornell does not exercise statutory supervisory authority to discipline or suspend. Although there is evidence that Cornell can report infractions to Johnson, Ordway and Matteson, he does not recommend discipline and thus, does not exercise supervisory authority in this manner. The Board has consistently held that employees, who solely report workplace infractions, but do not recommend discipline, are not statutory supervisors. *Ken-Crest Services*, 335 NLRB No. 63 (Aug. 27, 2001); *Vencor Hospital-Los Angeles*, 324 NLRB 234 (1997).

Similarly, although there is evidence that Cornell signs employee disciplinary forms in tandem with Johnson, Matteson and/or Ordway when he witnesses an incident, he plays no role in determining the level of discipline. The fact that Cornell simply signs a disciplinary form as a witness, but does not

determine discipline, is akin merely to reporting an infraction and hence, is not the exercise of supervisory authority. *Mt. Sinai Hospital*, 331 NLRB 895, 902, 904 (2000).

Cornell's periodic substitution for Matteson does not warrant the conclusion that he is a Section 2(11) supervisor. First, the record fails to define what duties Cornell performs when he substitutes for Matteson. As a result, Petitioner has failed to show that these substitute duties are supervisory. Second, the record fails to show how often substitution occurs. The Board has held that persons who solely exercise sporadic and irregular supervisory functions are not statutory supervisors. *Latas de Aluminio Reynolds*, 276 NLRB 1313 (1985). As a result, Petitioner has failed to show that Cornell substitutes for Matteson on something more than a sporadic and irregular basis. See, e.g., *Commercial Fleet Wash, Inc.*, 190 NLRB 326 (1971).

The continuous availability of Alfred's supervisory and managerial hierarchy in the physical plant department supports a finding that Cornell is not a statutory supervisor. *Northcrest Nursing Home*, 313 NLRB 491, 500 (1993).

In sum, I find that Cornell, as a senior custodian, who occasionally trains less senior custodians and monitors their work, is at best, a non-supervisory lead person. See, e.g., *Adco Electric, Inc.*, 307 NLRB 1113, 1122-26 (1992).

APPROPRIATE UNIT

The following Alfred employees constitute an appropriate collective bargaining unit within the meaning of Section 9(b) of the Act:

All full-time and regular part-time carpenters, machinists, janitors, senior janitors, administrative aides, library clerks, secretary – UG schedule, CEMS/OSP/CACT accounts secretary, secretary – Scholes Library, administrative assistants, secretary to dean CEMS, mechanics/locksmiths, assistant to museum director, mail and supply clerks, payroll officers, cataloging specialists, human resources assistants, visual resources assistant, principal stores clerks, processing and thermal analysis lab technicians, library clerks, secretary - WRC, electricians, electro mechanics lab technician/safety coordinators, secretary – CGR, accounting clerks, web production &

design assistants, serials assistants, technical services assistants, main assistants/carpenters, laboratory technicians, laboratory mechanics, plumbers, web production specialists, CACT/NYSTAR accounts secretary, research account specialists, purchasing agents, secretary – continuing education, secretary – CACT, secretary – graduate sched./admin. advising, electronic ceramics technicians, accounts payable clerks, glass studio technicians and 2-D technicians; excluded: all confidential personnel, security personnel, guards, professional employees and supervisors as defined in the Act.

There are approximately 53 employees in the bargaining unit found appropriate herein.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate, as described above, at the time and place set forth in the notice of election to be issued subsequently subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **Civil Service Employees Association, Local 1000, AFSCME, AFL-CIO.**

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to lists of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision, **2** copies of an election eligibility list, containing the full names and addresses of all eligible voters, shall be filed by the Employer with the Acting Regional Director of Region Three of the National Labor Relations Board who shall make the lists available to all parties to the election. In order to be timely filed, such lists must be received in the Albany Resident Office, Room 342, Leo W. O'Brien Federal Building, Clinton Avenue and North Pearl Street, Albany, New York 12207 on or before **July 22, 2003**. No extension of time to file the lists shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 Fourteenth Street, NW, Washington, DC 20570. This request must be received by the Board in Washington by **July 29, 2003**.

DATED at Buffalo, New York this 15th day of July, 2003.

RHONDA P. ALIOUAT, Acting Regional Director
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